

**UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD: REGION 1**

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**FARERI ASSOCIATES, LP, GREENWICH PARK, LLC,  
GREENWICH PREMIER SERVICES CORP., AND BRENWOOD  
HOSPITALITY, LLC A SINGLE EMPLOYER<sup>1</sup>**

**AND**

**SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 32BJ**  
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**Case Nos.:  
01-CA-188158, 01-CA-  
190046, 01-CA-191779,  
01-CA-214016**

**MOTION TO DISMISS  
GENERAL COUNSEL'S  
AMENDMENT TO THE  
COMPLAINT**

**MEMORANDUM IN SUPPORT OF RESPONDENTS' MOTION TO  
DISMISS GENERAL COUNSEL'S AMENDMENT TO THE COMPLAINT**

**PRELIMINARY STATEMENT**

Fareri Associates, LP ("Fareri"), Greenwich Park LLC ("GP"), Greenwich Premier Services Corp. ("GPS"), and Brenwood Hospitality, LLC ("Brenwood"), (collectively, "Respondents"), by and through their attorneys, Milman Labuda Law Group PLLC, pursuant to section 102.24(a) and 102.35(8) of the regulations for the National Labor Relations Board ("NLRB" or the "Board"), 29 C.F.R. § 102.24(a), 102.35(a)(8), move for an Order dismissing the amendment to the Complaint submitted orally into the record by Counsel for the General Counsel of the Board (the "General Counsel") regarding alleged unlawful interrogation of Eduardo Miguel Gonzalez, Virginia Cruz, Irma Arango, and Ana Elicea based on alleged violations of the doctrine articulated in Johnnie's Poultry Co., 146 N.L.R.B. 770 (1964).

The Johnnie's Poultry Co. doctrine only applies to employees. At the time of the alleged interrogation, neither of Eduardo Miguel Gonzalez, Virginia Cruz, Irma Arango, nor Ana Elicea

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<sup>1</sup> The Employer objects to this caption, as it contains a legal conclusion, and denies that the Respondents are a single employer.

were employees of Respondent. They were all employees of Integrated Building Management, Inc. (“IBM”). Therefore, the Johnnie’s Poultry Co. doctrine is not applicable to this case. Therefore, the General Counsel’s most recent amendment to the Complaint must be dismissed.

### **LEGAL STANDARD**

The Johnnie’s Poultry safeguards require: “(1) that the employer or its counsel obtain the employee’s voluntary participation after explaining the purpose of the questioning and providing adequate assurances that no reprisals will occur; (2) that the questioning itself be free of coercion in a context free from employer hostility to union organization; and (3) that the questioning must not exceed legitimate purposes by prying into other union matters, including the employee’s own subjective state of mind, or by otherwise interfering with employee rights.” Sutphin Car Wash and Retail, 2017 NLRB LEXIS 345, \*92 (July 6, 2017) (*citing* Albertson’s LLC, 359 NLRB 1341, 1359 (2013), *aff’d*. and incorporated by reference in 361 NLRB No. 71 (2014)).

Moreover, the rule of Johnnie’s Poultry does not apply to every interview an employer conducts with his employees. Delta Gas, Inc., 282 N.L.R.B. 1315, 1325 (February 19, 1987) (*citing* Levingston Shipbuilding Company, 249 NLRB 1 (1980); Pacific Southwest Airlines, 242 NLRB 1169, 1170 fn. 4 (1979)). Where the interview covers only work performance and does not touch on any protected activities, the Johnnie’s Poultry rule does not apply. *Id.* (*citing* Alton Box Board Company, 155 NLRB 1025 (1965)) (dismissing the General Counsel’s Johnnie’s Poultry claim contained in the Complaint).

### **ARGUMENT**

General Counsel amended the Complaint with the following allegation: “Since about August 2018 with Respondent by its Agents and Representatives at its Greenwich location interrogated its Employees about their Union Membership and Activities and the Union

Membership and Activities of other Employees.” Tr., Vol 8., 966:14-18. This amendment to General Counsel’s Complaint was based the testimony provided by Respondents’ witnesses Virginia Cruz and Miguel Eduardo Gonzalez regarding an August 2017 meeting between Counsel for Respondents and employees of Integrated Business Management (“IBM”). Tr., Vol. 7-8, 919:6, 937:4-19, 965:8-119, 966:11-24.

General Counsel’s amendment to the Complaint, however, must be dismissed, as a matter of law, because, at the time Virginia Cruz, Miguel Eduardo Gonzalez, Irma Arango, and Ana Elicea were served with Respondents’ subpoenas, attached hereto as Exhibit “A,” they were all employees of IBM, which is not a named party in this matter. Tr. Vol. 7, 902:2-903:13, 934:5-13. Accordingly, Respondents did not interview their employees, but employees of IBM. Id. Therefore, the Johnny Poultry doctrine is inapplicable to the facts giving rise to the General Counsel’s amendment, necessitating its dismissal.

Moreover, Respondents’ witnesses Cruz and Gonzalez testified that no one asked them about protected activity. Instead, Cruz and Gonzalez testified that any questions that were asked of them were no different than those asked during direct examination. Id. at 917:10-918:24, 937:4-19. All such questions were about the application process and the work performed at Greenwich Office Park. Id. There were no questions about union activity. Id.

Accordingly, since none of Respondents’ witnesses’ testimony supports General Counsel’s claim that Respondents interrogated anyone about protected activity, but only about hiring policies and work performance, this claim must be dismissed. Delta Gas, Inc., 282 N.L.R.B. 1315, 1325 (February 19, 1987) (*citing* Alton Box Board Company, 155 NLRB 1025 (1965)) (dismissing the General Counsel’s Johnnie’s Poultry claim contained in the Complaint because the interviews did not concern protected activity).

Finally, as previously stated, there is no testimony supporting General Counsel's claim that any of those individuals contacted by Respondents, or their agents, in relation to the August 2018 meeting were employees of Respondents at the time of the interviews. Those individuals, rather, were all IBM employees. Therefore, the interviews in question were not conducted by an "employer," eliminating any possibility of intimidation, coercion, or interference with an employee's protected rights. Moreover, there has been no testimony that IBM, who is not named in this case, acted in any way to restrain its employees in the exercise of their protected rights. As a result, Johnnie's Poultry is inapplicable to this case. Accordingly, the General Counsel's October 31, 2018 amendment to the Complaint must be dismissed.

#### **CONCLUSION**

Based on the foregoing, Respondents respectfully request that the Administrative Law Judge dismiss the General Counsel's October 31, 2018 amendment to the Complaint with prejudice.

Dated: November 26, 2018  
Lake Success, NY

Respectfully submitted,

/s/ John M. Harras  
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